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SEGAMAT CONSOLIDATED SDN BHD

v.

PEGAWAI KEWANGAN NEGERI JOHOR

B

COURT OF APPEAL, PUTRAJAYA
RAMLY ALI JCA
ANANTHAM KASINATHER JCA
MOHD ZAWAWI SALLEH JCA
[CIVIL APPEAL NO: J-01-646-11-2011]

C

9 JANUARY 2014

LAND LAW: *Acquisition of land - Acquisition by State Authority - Development and construction of road - Total sum paid to land owner exceeded amount awarded - Action to recover overpaid sum - Application*

D

under s. 33 of Government Proceedings Act 1956 for recovery of overpaid sum

CIVIL PROCEDURE: *Parties - Proper parties to be sued, whether - Land acquisition by State Authority for construction of road - Total sum*

E

paid to land owner exceeded amount awarded - Action to recover overpaid sum - Application under s. 33 of Government Proceedings Act 1956 for recovery of overpaid sum - State Financial Office cited as party - Whether party in which judgment was based

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In 1993, the Johor State Authority had acquired 10 lots of land belonging to the appellant for the development and construction of 'Projek Laluan Kedua Malaysia-Singapura dan Pembangunan Kawasan Gelang Patah'. However, it was discovered later that the total sum paid to the appellant exceeded the actual amount awarded. The Johor State Director of Land & Mines and the

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Johor Bahru Land Administrator ('the plaintiffs') commenced an action against the appellant to recover the overpaid sum. In refuting the claim, the appellant counterclaimed against the plaintiffs for the remaining 25% of the award of RM2,864,972.10 ('the said sum'). The court dismissed the plaintiff's claim and

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allowed the appellant's counterclaim. Dissatisfied, the plaintiffs appealed to the Court of Appeal but the appeal was dismissed. The Court of Appeal order was served on the plaintiffs and the Johor State Legal Advisor's Office and the appellant repeatedly reminded and requested for payment from the plaintiffs.

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Consequently, the appellant made an application to the High Court by virtue of s. 33 of the Government Proceedings Act 1956 ('GPA') to compel the plaintiffs to pay the said sum. The appellant

then proceeded to file an application for judicial review for an order of *mandamus*, citing the State Financial Officer ('the respondent') as a party. In dismissing the appellant's application, the High Court reasoned that (i) the respondent was not a party in which the judgment was based; and (ii) the application for an order of *mandamus* was made out of time or there was an inordinate delay. Hence, the present appeal.

Held (allowing appeal and setting aside decision of court below)

Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) The respondent was correctly cited as a party to the judicial review proceeding since the financial affairs of the State of Johor are within the responsibility and control of the respondent. Article 6(2)(c) of the Johor State Constitution (Second Part) provided that the State Financial Officer to be the principal officer in charge of financial affairs of the State. Further, art. 37(1)(c) provided that any money required to satisfy any judgment should be charged to the consolidated fund. As conferred by the Johor State Constitution, the duty to make payment in satisfaction of a judgment debt against the State related to financial affairs of the State, laid in the hands of the respondent. There was no one to whom the order of the court could more appropriately be addressed for purposes of satisfying the amount payable in terms of the certificate (paras 15 & 16).

(2) The appellant only commenced the enforcement proceeding after all the appeals against the said judgment had been disposed of and the plaintiffs' recalcitrance to pay the said judgment. By virtue of s. 33(3) of the GPA, the State was under a statutory duty to pay the judgment sum as stated in the certificate. In such circumstances, the duty to pay arose upon service of the certificate. Given the fact that the service of the certificate was not met with payment, the ground of application first arose on 13 January 2011 while the application for judicial review was filed on 31 January 2011. Therefore, it was well within time (paras 27 & 29).

(3) Once a judgment becomes final, the winning party was entitled as a matter of right to enforce the judgment. The appellant had obtained an order of *mandamus* to compel the respondent

to honour payment of judgment sum as required by the certificate issued pursuant to s. 33 of the GPA. The respondent could not take refuge in unnecessary legal technicalities to avoid giving effect to the said order. The respondent must take all steps that were necessary to ensure that the State Authority complied with the court order. (paras 30 & 31)

Bahasa Malaysia *Translation Of Headnotes*

Pada tahun 1993, Pihak Berkuasa Negeri Johor telah mengambil 10 lot tanah milik perayu bagi pembangunan dan pembinaan 'Projek Laluan Kedua Malaysia-Singapura dan Pembangunan Kawasan Gelang Patah'. Walau bagaimanapun, didapati kemudian bahawa jumlah keseluruhan yang dibayar oleh perayu melebihi jumlah sebenar yang diawardkan. Pengarah Tanah & Galian Negeri Johor dan Pentadbir Tanah Johor Bahru ('plaintif-plaintif') memulakan tindakan terhadap perayu untuk mendapatkan semula jumlah terlebih bayar tersebut. Dalam menafikan tuntutan, perayu menuntut balas terhadap plaintif-plaintif bagi baki 25% daripada award RM2,864,972.10 ('jumlah tersebut'). Mahkamah menolak tuntutan plaintif dan membenarkan tuntutan balas perayu. Tidak berpuas hati, plaintif merayu ke Mahkamah Rayuan tetapi permohonan tersebut ditolak. Perintah Mahkamah Rayuan disampaikan kepada plaintif-plaintif dan Pejabat Penasihat Undang-undang Negeri Johor dan perayu berulang kali mengingatkan dan meminta bayaran daripada plaintif-plaintif. Seterusnya, perayu membuat permohonan kepada Mahkamah Tinggi di bawah s. 33 Akta Prosiding Kerajaan 1956 ('APK') untuk mengarahkan plaintif-plaintif membayar jumlah tersebut. Perayu kemudiannya memfailkan permohonan bagi semakan kehakiman untuk perintah *mandamus*, menamakan Pegawai Kewangan Negeri sebagai pihak. Dalam menolak permohonan perayu, Mahkamah Tinggi memberi alasan bahawa (i) responden bukanlah pihak yang mana penghakiman diasaskan; dan (ii) permohonan bagi perintah *mandamus* dibuat luar had masa atau bahawa terdapat kelewatan melampau. Oleh itu, rayuan ini.

Diputuskan (membenarkan rayuan dan mengenepikan keputusan mahkamah bawahan)
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Responden telah dengan betul dinamakan sebagai pihak kepada prosiding semakan kehakiman kerana hal ehwal kewangan Negeri Johor adalah menjadi tanggungjawab dan kawalan responden. Perkara 6(2)(c) Perlembagaan Negeri Johor (Bahagian Kedua) memperuntukkan bahawa Pegawai Kewangan Negeri adalah pegawai utama yang bertugas dalam hal ehwal kewangan Negeri. Selanjutnya, perkara 37(1)(c) memperuntukkan bahawa sebarang kewangan yang diperlukan untuk memenuhi mana-mana penghakiman harus dicajkan kepada gabungan dana. Seperti yang diperuntukkan oleh Perlembagaan Negeri Johor, kewajipan untuk membuat bayaran bagi memenuhi hutang penghakiman terhadap Negeri berkaitan dengan hal ehwal Negeri, terletak dalam tangan responden. Tiada siapa lagi yang mana mahkamah boleh tujukan bagi tujuan memenuhi jumlah yang perlu dibayar dalam sijil.

(2) Perayu hanya memulakan prosiding pelaksanaan selepas kesemua rayuan terhadap penghakiman tersebut telah dilupuskan dan akibat kedegilan plaintif-plaintif untuk membayar penghakiman tersebut. Berdasarkan s. 33(3) APK, Negeri mempunyai kewajipan statutori untuk membayar jumlah penghakiman seperti yang dinyatakan dalam sijil. Dalam hal keadaan sedemikian, kewajipan untuk membayar berbangkit daripada penyampaian sijil. Memandangkan penyampaian sijil tidak dibalas dengan bayaran, alasan permohonan pada awalnya timbul pada 13 Januari 2011 sedangkan permohonan semakan kehakiman difailkan pada 31 Januari 2011. Oleh itu, ia masih dalam tempoh masa.

(3) Apabila satu penghakiman menjadi muktamad, pihak yang berjaya berhak, dari sisi hak, untuk melaksanakan penghakiman. Perayu telah mendapatkan perintah *mandamus* untuk mengarahkan responden membuat bayaran bagi hutang penghakiman seperti yang diperlukan dalam sijil yang dikeluarkan di bawah s. 33 APK. Responden tidak boleh berlindung di bawah teknikaliti-teknikaliti undang-undang yang tidak perlu untuk mengelakkan daripada melaksanakan perintah tersebut. Responden mestilah mengambil langkah-langkah yang perlu untuk memastikan bahawa Pihak Berkuasa Negeri mematuhi peraturan mahkamah.

Case(s) referred to:

Ibeneweka v. Egbuna [1964] 1 WLR 219 ***(refd)***

Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663 FC ***(refd)***

Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd [2010] 5 CLJ 123 CA ***(refd)***

Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd [2008] 5 CLJ 321 FC ***(refd)***

Steven Phoa Cheng Loon & Ors v. Highland Properties Sdn Bhd & Ors [2000] 4 CLJ 508 HC ***(refd)***

Yee Seng Plantations Sdn Bhd v. Kerajaan Negeri Terengganu & Ors [2000] 3 CLJ 666 CA ***(refd)***

Legislation referred to:

Financial Procedure Act 1957, s. 6(2)
Government Proceedings Act 1956, ss. 5, 6(1), (4), 33(3)
Johor State Constitution (Second Part), arts. 6(2)(c), 37(1)(c)
Land Acquisition Act 1960, s. 14
National Land Code, ss. 12(1), (2), 16(1), (2), (3)
Public Authorities Protection Act 1948, s. 2(a)

For the appellant - Norizawati Md Nor; M/s Lee Fook Leong & Co
For the respondent - Shahrizal Shaari; SFC

[Appeal from High Court, Johor Bahru; Judicial Review No: 25-3-2011]

Reported by Najib Tamby

JUDGMENT

Mohd Zawawi Salleh JCA:

Introduction

[1] This is an appeal against the decision of the learned High Court Judge of Johor Bharu, who dismissed the appellant's application for an order of *mandamus* to compel the respondent to honour payment of a judgment sum as required by the certificate issued by the court on 5 October 2010.

[2] We have heard the arguments of both learned counsel for the appellant and learned Senior Federal Counsel appearing for the respondent. After having carefully considered their respective arguments and having gone through the appeal records, we unanimously allowed the appeal and set aside the decision of the learned judge with costs fixed in the sum of RM10,000.

[3] We now give our reasons.

Facts Of The Case

[4] The genesis of the dispute may be traced to the event which occurred in 1993, when the Johor State Authority had decided to acquire ten lots of land belonging to the appellant for the development and construction of "Projek Laluan Kedua Malaysia – Singapura Dan Pembangunan Kawasan Gelang Patah". The acquisition was concluded with a written award in Form G by the Johor Bahru Land Administrator pursuant to s. 14 of the Land Acquisition Act 1960.

[5] However, it was subsequently discovered that the total sum paid to the appellant exceeded the actual amount awarded. The Johor State Director of Land & Mines and the Johor Bahru Land Administrator (hereinafter referred to as "plaintiffs") commenced action against the appellant to recover the overpaid sum in Civil Suit No: 21-108-1999. The appellant refuted the claim; instead it counter claimed against the plaintiffs for the remaining 25% of the award of RM2,864,972.10.

[6] The appellant obtained judgment against the plaintiffs on 16 February 2005 when the learned judge dismissed the plaintiffs' claim and allowed the appellant's counterclaim with interest thereon at the rate of 8% per annum from 17 June 1997 until 16 February 2005.

[7] Dissatisfied, the plaintiffs appealed to the Court of Appeal *vide* notice of appeal dated 17 February 2005. On 23 February 2009, the Court of Appeal dismissed the plaintiffs' application for an extension of time to file appeal record. Consequential to the order, the Court of Appeal also dismissed the plaintiffs' appeal and affirmed the decision of the High Court.

[8] Plaintiffs did not pursue the appeal at the Federal Court. Therefore, all appeal avenues against the said judgment have been exhausted and the said judgment stands undisputed and final.

[9] The Court of Appeal order dated 23 February 2009 was served on the plaintiffs and the Johor State Legal Advisor's Office on 10 September 2009. The appellant through its solicitors, between 8 April 2010 and 26 June 2010, made repeated reminder and requests to the plaintiffs for payment but was totally ignored. Consequently, upon the appellant's application on 21 July 2010,

A the High Court issued a certificate dated 5 October 2010 pursuant to s. 33 of the Government Proceedings Act 1956 ("GPA 1956"), ordering the plaintiffs to pay the sum RM2,864,972.10 owing to the appellant.

B **[10]** The certificate was duly served on the Johor State Legal Advisor's Office on 13 January 2011. No steps were taken to set aside the certificate and the plaintiffs had totally failed to honour payment in accordance with the certificate.

C **[11]** On 31 January 2011, the appellant filed an application for judicial review for an order of *mandamus*, citing the Pegawai Kewangan Negeri Johor (the state financial officer, respondent herein) as a party. The appellant obtained leave on 25 May 2011. However, on 7 October 2011, after hearing the merit of the case, the learned judge dismissed the appellant's application for an order D of *mandamus* to compel the respondent to comply with the certificate.

Decision Of The High Court

E **[12]** In dismissing the appellant's application for an order of *mandamus*, the learned judge in his grounds of judgment, *albeit* short and straight to the point, reasoned that:

(i) The respondent is not a party in which the judgment is based; and F

(ii) The application for an order of *mandamus* was made out of time or there was an inordinate delay.

[13] We will proceed to deal with the above issues in turn.

G *Whether The Respondent Is A Proper Party To The Application?*

[14] Learned counsel for the respondent submitted that the learned judge erred in fact and law in holding that the respondent is not the right person to be named since the state authority was H not a party to the original suit.

[15] Learned counsel's submission, stripped to its bare essentials, is short and simple. Section 6(2) of the Financial Procedure Act 1957 provides that the management of the consolidated fund of a I state and the supervision, control and direction of all matters relating to the financial affairs of the state not specifically assigned to any other person shall, subject to the Federal Constitution, the

Constitution of the state and the Act, vested in the state financial authority. Therefore, the respondent is correctly cited as a party to the judicial review proceedings since the financial affairs of the state of Johor are within the responsibility and control of the respondent.

[16] We agree with the submission of learned counsel for the appellant. Article 6(2)(c) of the Johor State Constitution (Second Part) provides that the state financial officer to be the principal officer in charge of financial affairs of state. Article 37(1)(c) provides that any money required to satisfy any judgment shall be charged to the Consolidated Fund. As conferred by the Johor State Constitution, the duty to make payment in satisfaction of a judgment debt against the state relates to financial affairs of the state lies in the hands of the respondent herein. Therefore, the respondent is the officer upon whom the appellant must obtain redress. There is no one to whom the order of the court can more appropriately be addressed for purposes of satisfying the amount payable in terms of the certificate. It was for this reason that the respondent was cited as a party in the court below.

[17] In addition, judgments sounding in money obviously fall within the ambit of orders referred to in s. 33(3) of GPA 1956. The section is the following terms:

> (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the appropriate Government shall, subject as hereinafter provided, pay to the person entitled or to his solicitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:
>
> > Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.

[18] In our considered view, the language used in the above section is clear and unambiguous and it imposed a statutory obligation on a state government to pay the person entitled or to his solicitors the amount appearing on the certificate. We are

fortified in our view by the decision in the case of *Minister of Finance, Government of Sabah v. Petrojasa Sdn Bhd* [2008] 5 CLJ 321, where the Federal Court stated that:

> ... there is a duty on the part of Government to pay the amount stated in the certificate issued under section 33(3) of the GPA to the respondent. It is not a matter of discretion for the Government whether to pay or not to pay. As a statutory duty it is of course binding on the State Government. And it is incumbent upon the court to give effect to such statutory duty and if necessary through the coercive force of the order of *mandamus*.

[19] In reply, learned Senior Federal Counsel appearing for the respondent submitted that the plaintiffs in the original suit were not acting on behalf of the state authority but as the intermediate in the land acquisition. Therefore, the proper party to be cited is the plaintiffs in the original suit and not the respondent herein.

[20] With respect, learned Senior Federal Counsel's submission is devoid of merit. This is because the first plaintiff in the original suit, the State Director of Lands and Mines, is duly appointed by the state authority pursuant to s. 12(1) of the National Land Code (NLC). The second plaintiff's appointment by the state authority is by virtue of s. 12(2) of the same Code.

[21] Section 16(1) of NLC further provides that a state director is capable of representing the state authority in a litigation. Subsections (2) and (3) read as follows:

> (2) Any action, suit or other proceeding relating to land in which it is sought to establish any liability on the part of the State Authority shall be brought against the State Director in the name of his office.
>
> (3) In any action, suit or other proceeding to which this section applies, the State Director may appear personally, or may be represented by any advocate and solicitor, any Federal Counsel, the State's Legal Adviser or any Land Administrator or other officer appointed under sub-section (1) of section 12.

[22] The first plaintiff had commenced proceedings against the appellant in Civil Suit No: 21-108-1999. By extension, the state authority was named in the original suit by virtue of the above provision. In our view, it would be quite intolerable in the circumstance of the present case to permit the state authority to

assert that it is not a party in the original suit when in reality it is an interested party in the proceedings who is fighting the suit from behind the hedge. (See *Ibeneweka v. Egbuna* [1964] 1 WLR 219 (PC), *Yee Seng Plantations Sdn Bhd v. Kerajaan Negeri Terengganu & Ors* [2000] 3 CLJ 666 (CA)).

[23] The learned Senior Federal Counsel further contended that the appellant had failed to adhere to the provisions of ss. 5, 6(1) and 6(4) of the GPA 1956 by naming the plaintiffs. The case of *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2009] 1 CLJ 663 (FC) was cited in support of his argument.

[24] We agree that ss. 5 and 6 of the GPA 1956 weigh heavily on the need to name the officer responsible for the alleged tortious act, and his liability must be established before the government could be made vicariously liable as principal. (See *Steven Phoa Cheng Loon & Ors v. Highland Properties Sdn Bhd & Ors* [2000] 4 CLJ 508 (HC)). However, these sections are irrelevant in the present proceedings. As we have alluded to earlier, the determination of the liability of the state in the original suit has reached its finality and the state is bound by the judgment. The present proceedings concern the satisfaction of a monetary judgment which has become executory.

Whether The Application For Judicial Review Is Time-barred?

[25] The learned judge held that the application for judicial review is time-barred since the appellant took more than six years to execute or enforce the judgment. It would appear that the learned judge was of the view that the time starts to run from the date of the judgment ie, 16 February 2005.

[26] Learned Senior Federal Counsel submitted that by virtue of s. 2(a) of the Public Authorities Protection Act ('PAPA') 1948, the appellant should enforce the judgment within 36 months from 16 February 2005. The last day of enforcement should end on 15 February 2008. Therefore, the certificate was bad in law. On that score, it was contended that the learned judge was correct in finding that the appellant's application is statute-barred.

[27] With respect, we cannot accept learned Senior Federal Counsel's submission. From the facts of the case, it was clear that the appellant only commenced enforcement proceedings after all appeals against the said judgment had been disposed of and the plaintiffs' recalcitrance to pay the said judgment.

[28] The complaint herein is in respect of the failure on the part of the respondent to comply with the certificate. Reading the words "within 36 months next after the act, neglect or default complained of" in s. 2(a) of PAPA 1948 in its plain and ordinary meaning, we are of the clear view that the date when time starts to run is on 13 January 2011, that is to say, when the presentation of certificate was not met with payment.

[29] As we have alluded to earlier in this judgment, by virtue of s. 33(3) of the GPA 1956, the state is under a statutory duty to pay the judgment sum as stated in the certificate. In such circumstances, the duty to pay arose upon service of the certificate. Given the fact that the service of the certificate was not met with payment, the grounds of the application first arose on 13 January 2011. The application for judicial review was filed on 31 January 2011. Therefore, it was well within time. (See *Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd* [2010] 5 CLJ 123 (CA)).

Conclusion

[30] It is basic that once a judgment becomes final, the winning party is entitled as a matter of right to enforce the judgment. It has been fittingly said that "an execution is the fruit and end of the suit, and is very aptly called the life of law.".

[31] The appellant had obtained an order of *mandamus* to compel the respondent to honour payment of judgment sum as required by the certificate issued pursuant to s. 33 of the GPA 1956. Therefore, the respondent cannot take refuge in unnecessary legal technicalities to avoid giving effect to said order. The respondent must take all steps that are necessary to ensure that the state authority complies with the court order. Otherwise, the court order would be a mere "pious aspiration" and it could be ignored and disregarded with impunity.

[32] For the foregoing reasons, we allowed the appeal and set aside the decision of the learned judge. There should be an order of *mandamus* against the respondent in the terms of the court certificate dated 5 October 2010.